

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 EDDIE Z. GARCIA,

12 Plaintiff,

13 v.

14 JEFFERY ANDREWS, *et al.*,

15 Defendants.
16

Case No. 2:18-cv-08198-MWF (AFM)

**ORDER DISMISSING SECOND
AMENDED COMPLAINT WITH
LEAVE TO AMEND**

17 Plaintiff, a state prisoner currently held at the California Men’s Colony State
18 Prison in San Luis Obispo, California, filed a *pro se* civil rights Complaint pursuant
19 to 42 U.S.C. § 1983 on September 21, 2018. (ECF No. 1.) Plaintiff subsequently
20 was granted leave to proceed without prepayment of the filing fees. (ECF No. 6.)
21 The Complaint named as defendants eight deputy sheriffs with the Palm Desert
22 Sheriff’s Department (the “PDSD”); all defendants were named in their official as
23 well as individual capacities. (ECF No. 1 at 2-5.) Plaintiff’s claims appeared to arise
24 from an incident on October 30, 2016, during which the deputies were alleged to
25 have used excessive force against plaintiff. (*Id.* at 3-5.) Plaintiff’s Complaint did
26 not expressly set forth any claims, and it did not appear to seek any relief.

27 The Court screened the Complaint prior to ordering service for purposes of
28 determining whether the action is frivolous or malicious; fails to state a claim on

1 which relief may be granted; or seeks monetary relief against a defendant who is
2 immune from such relief. *See* 28 U.S.C. §§ 1915(e)(2), 1915A.

3 Following careful review of the Complaint, the Court found that it failed to
4 comply with Fed. R. Civ. P. 8 because it failed to state a short and plain statement
5 that is sufficient to give each defendant fair notice of what plaintiff's claims are and
6 the grounds upon which they rest. Further, the Complaint did not seek any relief
7 from any defendant. Accordingly, on October 11, 2018, the Complaint was
8 dismissed with leave to amend. *See Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th
9 Cir. 2015) ("A district court should not dismiss a *pro se* complaint without leave to
10 amend unless it is absolutely clear that the deficiencies of the complaint could not be
11 cured by amendment.") (internal quotation marks omitted). If plaintiff desired to
12 pursue this action, he was ordered to file a First Amended Complaint no later than
13 thirty (30) days after the date of the Court's Order, remedying the deficiencies
14 discussed in the Court's Order. (ECF No. 9.)

15 Plaintiff filed a First Amended Complaint ("FAC") on October 31, 2018.
16 (ECF No. 11.) In the FAC, plaintiff named as defendants Deputy Jeffery Andrews
17 and Deputy D. Smith, both with the PDSO. Plaintiff named each officer in his official
18 as well as individual capacity. (*Id.* at 3.) Plaintiff's FAC purported to raise two
19 claims under the Fourth and Eighth Amendments, for "an illegal search and seizure
20 [sic]" and the use of excessive force. (*Id.* at 5.) Both claims appeared to arise from
21 the incident on October 30, 2016. (*Id.* at 6.)

22 Following careful review of the FAC, the Court found that it failed to comply
23 with Rule 8 because it failed to state a short and plain statement that is sufficient to
24 give each defendant fair notice of what plaintiff's claims are and the grounds upon
25 which they rest. Further, the FAC failed to sufficiently allege a claim upon which
26 relief may be granted. Accordingly, the FAC was dismissed with leave to amend.
27 *See Rosati*, 791 F.3d at 1039 ("A district court should not dismiss a *pro se* complaint
28 without leave to amend unless it is absolutely clear that the deficiencies of the

1 complaint could not be cured by amendment.”) (internal quotation marks omitted).
2 If plaintiff desired to pursue this action, he was ordered to file a Second Amended
3 Complaint no later than thirty (30) days after the date of the Court’s Order, remedying
4 the deficiencies discussed in the Court’s Order. (ECF No. 12.)

5 Plaintiff filed a Second Amended Complaint (“SAC”) on January 25, 2019.
6 (ECF No. 15.) In the SAC, plaintiff names as defendants Deputy Jeffery Andrews
7 and Deputy D. Smith, both with the PDSO. Plaintiff names each officer in his
8 individual capacity. (*Id.* at 3.) Plaintiff’s SAC purports to raise one claim under the
9 Fourth Amendment, for “an illegal search and seizure [sic]” and the use of excessive
10 force. (*Id.* at 5.) Plaintiff’s claim appears to arise from the incident on October 30,
11 2016. (*Id.* at 6.) Plaintiff seeks monetary relief. (*Id.* at 10.)

12 The Court has once again screened the pleading pursuant to 28 U.S.C.
13 §§ 1915(e)(2), 1915A. The Court’s screening of the pleading under the foregoing
14 statutes is governed by the following standards. A complaint may be dismissed as a
15 matter of law for failure to state a claim for two reasons: (1) lack of a cognizable
16 legal theory; or (2) insufficient facts under a cognizable legal theory. *See Balistreri*
17 *v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990); *see also Rosati v.*
18 *Igbino*, 791 F.3d 1037, 1039 (9th Cir. 2015) (when determining whether a
19 complaint should be dismissed for failure to state a claim under 28 U.S.C.
20 § 1915(e)(2), the court applies the same standard as applied in a motion to dismiss
21 pursuant to Rule 12(b)(6)). In determining whether the pleading states a claim on
22 which relief may be granted, its allegations of material fact must be taken as true and
23 construed in the light most favorable to plaintiff. *See Love v. United States*, 915 F.2d
24 1242, 1245 (9th Cir. 1989). However, the “tenet that a court must accept as true all
25 of the allegations contained in a complaint is inapplicable to legal conclusions.”
26 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Nor is the Court “bound to accept as
27 true a legal conclusion couched as a factual allegation.” *Wood v. Moss*, 134 S. Ct.
28 2056, 2065 n.5 (2014) (citing *Iqbal*, 556 U.S. at 678). Rather, a court first “discounts

1 conclusory statements, which are not entitled to the presumption of truth, before
2 determining whether a claim is plausible.” *Salameh v. Tarsadia Hotel*, 726 F.3d
3 1124, 1129 (9th Cir. 2013).

4 Further, since plaintiff is appearing *pro se*, the Court must construe the
5 allegations of the pleading liberally and must afford plaintiff the benefit of any doubt.
6 See *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010); see also *Alvarez v. Hill*, 518
7 F.3d 1152, 1158 (9th Cir. 2008) (because plaintiff was proceeding *pro se*, “the district
8 court was required to ‘afford [him] the benefit of any doubt’ in ascertaining what
9 claims he ‘raised in his complaint’”) (alteration in original). However, the Supreme
10 Court has held that “a plaintiff’s obligation to provide the ‘grounds’ of his
11 ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic
12 recitation of the elements of a cause of action will not do. . . . Factual allegations
13 must be enough to raise a right to relief above the speculative level . . . on the
14 assumption that all the allegations in the complaint are true (even if doubtful in fact).”
15 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted,
16 alteration in original); see also *Iqbal*, 556 U.S. at 678 (To avoid dismissal for failure
17 to state a claim, “a complaint must contain sufficient factual matter, accepted as true,
18 to ‘state a claim to relief that is plausible on its face.’ . . . A claim has facial
19 plausibility when the plaintiff pleads factual content that allows the court to draw the
20 reasonable inference that the defendant is liable for the misconduct alleged.” (internal
21 citation omitted)).

22 In addition, Fed. R. Civ. P. 8(a) (“Rule 8”) states:

23 A pleading that states a claim for relief must contain: (1) a
24 short and plain statement of the grounds for the court’s
25 jurisdiction . . .; (2) *a short and plain statement of the claim*
26 showing that the pleader is entitled to relief; and (3) a
27 demand for the relief sought, which may include relief in
the alternative or different types of relief.

28 (Emphasis added). Further, Rule 8(d)(1) provides: “Each allegation must be simple,

1 concise, and direct.” Although the Court must construe a *pro se* plaintiff’s pleadings
2 liberally, a plaintiff nonetheless must allege a minimum factual and legal basis for
3 each claim that is sufficient to give each defendant fair notice of what plaintiff’s
4 claims are and the grounds upon which they rest. *See, e.g., Brazil v. United States*
5 *Dep’t of the Navy*, 66 F.3d 193, 199 (9th Cir. 1995); *McKeever v. Block*, 932 F.2d
6 795, 798 (9th Cir. 1991) (a complaint must give defendants fair notice of the claims
7 against them). If a plaintiff fails to clearly and concisely set forth factual allegations
8 sufficient to provide defendants with notice of which defendant is being sued on
9 which theory and what relief is being sought against them, the pleading fails to
10 comply with Rule 8. *See, e.g., McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir.
11 1996); *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981). A
12 claim has “substantive plausibility” if a plaintiff alleges “simply, concisely, and
13 directly [the] events” that entitle him to damages. *Johnson v. City of Shelby, Miss.*,
14 135 S. Ct. 346, 347 (2014). Failure to comply with Rule 8 constitutes an independent
15 basis for dismissal of a pleading that applies even if the claims are not found to be
16 wholly without merit. *See McHenry*, 84 F.3d at 1179; *Nevijel*, 651 F.2d at 673.

17 Following careful review of the SAC, the Court finds that it complies with
18 Rule 8 because it provides a short and plain statement that is sufficient to give each
19 defendant fair notice of what plaintiff’s claims are and the grounds upon which they
20 rest. Further, the SAC sufficiently alleges a claim for excessive force against
21 defendant Andrews. However, the SAC fails to sufficiently allege a claim upon
22 which relief may be granted with respect to any claim against defendant Smith. The
23 SAC also fails to sufficiently allege any claim upon which relief may be granted with
24 respect to plaintiff’s Fourth Amendment search and seizure claims. Accordingly, the
25 SAC is dismissed with leave to amend. *See Rosati*, 791 F.3d at 1039 (“A district
26 court should not dismiss a *pro se* complaint without leave to amend unless it is
27 absolutely clear that the deficiencies of the complaint could not be cured by
28 amendment.”) (internal quotation marks omitted).

1 **If plaintiff desires to pursue this action, he is ORDERED to file a Third**
2 **Amended Complaint no later than thirty (30) days after the date of this Order,**
3 **remediating the deficiencies discussed below.** Further, plaintiff is admonished that,
4 if he fails to timely file a Third Amended Complaint, or fails to remedy the
5 deficiencies of this pleading as discussed herein, the Court will recommend that this
6 action be dismissed without leave to amend and with prejudice.¹

7 **A. Pleading Requirements**

8 To state a federal civil rights claim against a particular defendant, plaintiff
9 must allege that a specific defendant, while acting under color of state law, deprived
10 him of a right guaranteed under the Constitution or a federal statute. *See West v.*
11 *Atkins*, 487 U.S. 42, 48 (1988). “A person deprives another ‘of a constitutional right,
12 within the meaning of section 1983, if he does an affirmative act, participates in
13 another’s affirmative acts, or omits to perform an act which he is legally required to
14 do that *causes* the deprivation of which [the plaintiffs complains].” *Leer v. Murphy*,
15 844 F.2d 628, 633 (9th Cir. 1988) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
16 Cir. 1978) (emphasis and alteration in original)).

17 A claim for the excessive use of force by an officer falls under the
18 Fourth Amendment right to be free from unreasonable seizures of the person. *See*
19 U.S. Const. amend. IV; *Graham v. Connor*, 490 U.S. 386, 394-95 (1989). The Fourth
20 Amendment “guarantees citizens the right ‘to be secure in their persons . . . against

21
22 ¹ Plaintiff is advised that this Court’s determination herein that the allegations in the
23 Second Amended Complaint are insufficient to state a particular claim should not be seen
24 as dispositive of that claim. Accordingly, although this Court believes that you have failed
25 to plead sufficient factual matter in your pleading, accepted as true, to state a claim to relief
26 that is plausible on its face, you are not required to omit any claim or defendant in order to
27 pursue this action. However, if you decide to pursue a claim in a Third Amended Complaint
28 that this Court has found to be insufficient, then this Court, pursuant to the provisions of 28
U.S.C. § 636, ultimately may submit to the assigned district judge a recommendation that
such claim be dismissed with prejudice for failure to state a claim, subject to your right at
that time to file Objections with the district judge as provided in the Local Rules Governing
Duties of Magistrate Judges.

1 unreasonable . . . seizures’ of the person.’” *Graham*, 490 U.S. at 394 (alterations in
2 original). A plaintiff’s claims regarding an allegedly unreasonable seizure are
3 “analyzed under the Fourth Amendment’s ‘objective reasonableness standard.’”
4 *Saucier v. Katz*, 533 U.S. 194, 204 (2001) (citing *Graham*, 490 U.S. at 388, 394).
5 The “reasonableness” of an officer’s actions “must be judged from the perspective of
6 a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”
7 *Graham*, 490 U.S. at 396.

8 The determination of whether an officer’s use of force was “reasonable” under
9 the Fourth Amendment “requires a careful balancing of the nature and quality of the
10 intrusion on the individual’s Fourth Amendment interests against the countervailing
11 government interests at stake.” *Graham*, 490 U.S. at 396 (internal quotations
12 omitted). Such an analysis requires “careful attention to the facts and circumstances
13 in each particular case, including the severity of the crime at issue, whether the
14 suspect poses an immediate threat to the safety of the officers or others, and whether
15 he is actively resisting arrest or attempting to evade arrest by flight.” *Id.* Moreover,
16 the Supreme Court has held that, in determining whether the force used to effect a
17 particular seizure is “reasonable” under the Fourth Amendment, “the question is
18 whether the officers’ actions are ‘objectively reasonable’ in light of the facts and
19 circumstances confronting them, without regard to their underlying intent or
20 motivation.” *Id.* at 397. As the Ninth Circuit has emphasized, “the most important
21 factor under *Graham* is whether the suspect posed an immediate threat to the safety
22 of the officers or others.” *C.V. v. City of Anaheim*, 823 F.3d 1252, 1255 (9th Cir.
23 2016) (internal quotation marks omitted).

24 **B. Defendant Andrews**

25 Plaintiff claims that defendant Andrews (“Andrews”) violated his Fourth
26 Amendment rights when Andrews used excessive force during a *Terry* stop that
27 resulted in an arrest. Plaintiff alleges that: (1) on the night of October 30, 2016,
28 Andrews “stopped Plaintiff while Plaintiff was walking east of Detil Way in the City

1 of Palm Desert;” (2) Andrews asked plaintiff’s name and if plaintiff “was on
2 probation or parole;” (3) Andrews told plaintiff the reason he asked was because
3 plaintiff “fit the description of a bold (sic) headed Mexican;” (4) plaintiff gave
4 Andrews his name and the two men “walked away from each other;” (5) “after a short
5 distance,” Andrews yelled plaintiff’s name and said plaintiff “wasn’t free to go yet
6 because Andrews needed to clear something up;” (6) plaintiff “stopped, turned
7 around, and asked Andrews if Plaintiff was under arrest;” (7) Andrews said plaintiff
8 was not under arrest, and plaintiff turned to walk away; (8) Andrews jumped in front
9 of plaintiff, yelled at plaintiff, shoved plaintiff in the chest, pushed plaintiff back, and
10 started punching plaintiff in the face; (9) plaintiff backed away from Andrews, “with
11 both arms held up in an attempt to block Andrews blows;” (10) Andrews put plaintiff
12 in a “choke hold;” (11) Andrews wrapped his legs around plaintiff’s waist, “taking
13 plaintiff to the ground and continued punching and elbowing Plaintiff in the face until
14 knocking Plaintiff unconscious;”² (12) as a result of Andrews’ actions, plaintiff
15 suffered a concussion, a broken lacrimal bone, a fractured skull, nerve damage, a torn
16 labrum, a shoulder injury, and bite marks; (13) as a result of Andrews’ actions,
17 plaintiff was diagnosed with and was treated for “Post-Traumadic (sic) Stress.” (ECF
18 No. 15 at 6-8, 30.)

19 Based upon the foregoing, the court finds that plaintiff has satisfied the
20 requirements of Rule 8, by setting forth a factual basis for his claim that is sufficient
21 to give defendant Andrews fair notice of what plaintiff’s claim is and the grounds
22 upon which it rests. Further, taking plaintiff’s factual allegations as true and
23 construing those facts in the light most favorable to plaintiff, the Court finds that
24

25
26 ² Plaintiff’s SAC is unclear as to when, exactly, plaintiff lost consciousness, or if he was in
27 fact knocked unconscious. However, at what point plaintiff lost consciousness or whether
28 he lost consciousness is not dispositive as to whether plaintiff has stated a plausible claim
that may entitle him to relief.

1 plaintiff has met the minimal pleading criteria to state a Fourth Amendment claim
2 for excessive force.

3 **C. Defendant Smith**

4 Plaintiff alleges that: (1) defendant Smith (“Smith”) arrived “on the scene to
5 assist Andrews, and while Andrews was in the process of beating on Plaintiff . . .
6 Smith immediately held Plaintiff by the legs while Andrews continued punching and
7 elbowing Plaintiff’s face;” (2) “[w]hile Andrews was beating on Plaintiff and Smith
8 was holding onto Plaintiff’s legs, Smith yelled to Andrews that Plaintiff was reaching
9 for Smith’s gun, and this caused Andrews to pick up the pace in beating on Plaintiff
10 and Smith joined in by beating on Plaintiff also;” and (3) Smith told plaintiff to “Shut
11 your mouth!” (ECF No. 15 at 7-8.)

12 Based upon the foregoing, the court finds that plaintiff has satisfied the
13 requirements of Rule 8, by setting forth a factual basis for his claim that is sufficient
14 to give defendant Smith fair notice of what plaintiff’s claim is and the grounds upon
15 which it rests. However, the Court finds that plaintiff has not met the minimal
16 pleading criteria to state a Fourth Amendment excessive force claim. Here, plaintiff
17 alleges that defendant Smith arrived on scene after Andrews and plaintiff were on the
18 ground. (See ECF No. 15 at 7 ¶¶ 5-6; 16-17.)

19 The “reasonableness” of an officer’s actions “must be judged from the
20 perspective of a reasonable officer on the scene, rather than with the 20/20 vision of
21 hindsight.” *Graham*, 490 U.S. at 396. “[T]he most important factor under *Graham*
22 is whether the suspect posed an immediate threat to the safety of the officers or
23 others.” *City of Anaheim*, 823 F.3d at 1255. Taking the facts alleged in the SAC as
24 true and construing them in the light most favorable to plaintiff, it appears that, after
25 coming upon Deputy Andrews and plaintiff “struggling on the ground” (ECF No. 15
26 at 20), Smith’s reaction of grabbing plaintiff’s legs, attempting to subdue him, and
27 handcuffing him, was “‘objectively reasonable’ in light of the facts and
28 circumstances confronting [him].” *Graham*, 490 U.S. at 397.

1 **D. Fourth Amendment violations pursuant to *Terry* and unlawful arrest**

2 Plaintiff alleges that defendant Andrews did not have probable cause to stop
3 him. (ECF No. 15 at 8.) As a general matter, the Fourth Amendment protects “[t]he
4 right of people to be secure in their persons, houses, papers, and effects, against
5 unreasonable search and seizure.” U.S. Const. Amend. IV. Without making an
6 arrest, a law enforcement officer may stop any person in a public place whom such
7 officer reasonably suspects is committing, has committed, or is about to commit a
8 crime and may demand the name and address of such suspect and an explanation of
9 such suspect’s actions. *Terry v. Ohio*, 392 U.S. 1 (1968). In *Terry*, the Court held
10 an officer may stop and frisk an individual even though the officer does not have
11 probable cause to believe a crime has been or is being committed if the officer is able
12 to point to “specific and articulable facts which, when taken together with reasonable
13 inferences from those facts, reasonably warrant that intrusion.” *Terry*, 392 U.S. at
14 21.

15 Here, Plaintiff alleges Andrews told him that he was stopped because he “fit
16 the description of a [bald] headed Mexican.” (ECF No. 15 at 6.) The exhibits
17 attached to Plaintiff’s SAC show that Deputy Andrews was responding to a “call of
18 forcible entry” and that plaintiff “partially match[ed] the description of the suspect.”
19 (*Id.* at 33.) The suspect was described as “a Hispanic male adult about 5’02”, a shaved
20 haircut, wearing a grey sweater and blue jean shorts.” (*Id.*) That night, plaintiff was
21 described as a Hispanic male with a shaved head, “wearing a grey jacket and white
22 plaid shorts.” (*Id.*) After Deputy Andrews concluded the initial stop, a witness
23 identified plaintiff as the suspect. (*Id.*) Accordingly, plaintiff has failed to state a
24 claim for a Fourth Amendment violation with respect to being stopped and
25 questioned by Deputy Andrews.

26 Plaintiff alleges that his Fourth Amendment rights were violated when he was
27 arrested without probable cause. In support of his claim, plaintiff states that, on
28 April 14, 2017, he was “convicted of Resisting or Deterring Officer, and the original

1 charges of vandalism and forcible entry; and property damage were all dismissed.
2 (Riverside Country Super.Ct. number: INF 1601632).” (*Id.* at 9.) “A claim for
3 unlawful arrest is cognizable under § 1983 as a violation of the Fourth Amendment,
4 provided the arrest was without probable cause or other justification.” *Dubner v. City*
5 *and Cnty. of San Francisco*, 266 F.3d 959, 964 (9th Cir. 2001). “Probable cause to
6 arrest exists when officers have knowledge or reasonably trustworthy information
7 sufficient to lead a person of reasonable caution to believe that an offense has been
8 or is being committed by the person being arrested.” *Ramirez v. City of Buena Park*,
9 560 F.3d 1012, 1023 (9th Cir. 2009) (quoting *United States v. Lopez*, 482 F.3d 1067,
10 1072 (9th Cir. 2007)). In making such a determination, a court may “examine the
11 events leading up to the arrest, and then decide ‘whether these historical facts, viewed
12 from the standpoint of an objectively reasonable police officer, amount to probable
13 cause.’” *Maryland v. Pringle*, 540 U.S. 366, 371 (2003).

14 In his SAC, plaintiff states that Deputy Andrews was looking for a bald headed
15 Mexican and plaintiff is a bald headed Mexican, alluding that the only reason plaintiff
16 was arrested was because he is Mexican. (“Plaintiff then asked Andrews if Andrews
17 was going to harass every bold (sic) headed Mexican.” (ECF No. 15 at 6.)) However,
18 the facts in plaintiff’s SAC, including that a witness identified plaintiff as the suspect
19 and that plaintiff fled (*id.* at 23), tend to show that “under the totality of the
20 circumstances known to the arresting officers . . ., a prudent person would believe
21 the suspect had committed a crime.” *Dubner*, 266 F.3d at 966. Accordingly, based
22 on the current allegations in the SAC, plaintiff has failed to state a claim for a Fourth
23 Amendment violation with respect to his arrest.

24 *****

25 **If plaintiff desires to pursue this action, he is ORDERED to file a Third**
26 **Amended Complaint no later than thirty (30) days after the date of this Order,**
27 **remedying the pleading deficiencies discussed above.** The Third Amended
28 Complaint should bear the docket number assigned in this case; be labeled “Third

1 Amended Complaint”; and be complete in and of itself without reference to the
2 original Complaint, or any other pleading, attachment, or document.

3 The clerk is directed to send plaintiff a blank Central District civil rights
4 complaint form, which plaintiff is encouraged to utilize. Plaintiff is admonished that
5 he must sign and date the civil rights complaint form, and he must use the space
6 provided in the form to set forth all of the claims that he wishes to assert in a Third
7 Amended Complaint.

8 In addition, if plaintiff no longer wishes to pursue this action, he may request
9 a voluntary dismissal of the action pursuant to Federal Rule of Civil Procedure 41(a).
10 The clerk also is directed to attach a Notice of Dismissal form for plaintiff’s
11 convenience.

12 **Plaintiff is further admonished that, if he fails to timely file a Third**
13 **Amended Complaint, or fails to remedy the deficiencies of this pleading as**
14 **discussed herein, the Court will recommend that the action be dismissed on the**
15 **grounds set forth above and for failure to diligently prosecute.**

16 **IT IS SO ORDERED.**

17
18 DATED: 3/11/2019



19
20 ALEXANDER F. MacKINNON
21 UNITED STATES MAGISTRATE JUDGE

22 Attachments: Civil Rights Complaint (CV-066)
23 Notice of Dismissal (CV-009)
24
25
26
27
28